Vault

The King's Power in Eccleſiaſtical Matters truly Stated. 1688

HIS preſent Majeſty having erected an High-Commiſſion Court, to enquire of, and make redreſs in Eccleſiaſtical Matters, &c.

Q. Whether ſuch a Commiſſion, as the Law now ſtands, be good or not?

And I hold that the Commiſſion is not good. And to maintain my Opinion herein I ſhall, in the firſt place, briefly conſider what power the Crown of *England* had in Eccleſiaſtical or Spiritual Matters (for I take them to be ſynonymous Terms) before 17. *Car.* 1. *ca.* 11. And, 2*dly*. I ſhall particularly conſider that Act of 17. *Car.* 1. *ca.* 11. And, 3*dly*. I ſhall conſider 13. *Car.* 2. *ca.* 12. And by that time I have fully conſidered theſe Three Acts of Parliament it will plainly appear, That the Crown of *England* hath now no power to erect ſuch a Court.

I muſt confeſs and do agree, That by the common Law all Eccleſiaſtical Juriſdiction was lodged in the Crown; and the Biſhops, and all ſpiritual Perſons derived their Juriſdiction from thence: And I cannot find, that there were any attempts by the Clergy to diveſt the Crown of it, till *William* the Firſt's time, in whoſe time, and his Succeſſors down to King *John*, the Pope obtained four Points of Juriſdiction, 1*ſt*. Sending of Legates into *England*. 2*dly*. Drawing of Appeals to the Court of *Rome*. 3*dly*. Donation of Biſhopricks and other eccleſiaſtical Benefices. And, 4*ly*. Exemption of Clerks from the ſecular Power. Which four Points were gained within the ſpace of an Hundred and odd Years; but with all the oppoſition imaginable of the Kings and their People; and the Kingdom never came to be abſolutely inſlaved to the Church of *Rome* till King *John*'s time; and then both King and People were, and ſo continued to be in a great meaſure in *Henry* 3*d*'s time; and ſo would in all likelihood have continued, had not the Wiſe *Edward* 1*ſt*. oppoſed the Pope's Uſurpation, and made the Statute of *Mortmain*: But that which chiefly brake the Neck of this, was, That after the Pope and Clergy had endeavoured in *Ed.* 2. his time, and in the beginning of *Ed.* 3. to Uſurp again; *Ed.* 3. did reſiſt the Uſurpation, and made the Statutes of Proviſors, 25. *Ed.* 3. and 27. *Ed.* 3. And *Richard* 2. backed thoſe Acts with 16. *Rich.* 2. *ca.* 5. and kept the Power in the Crown by them Laws; which being interrupted by Queen *Mary*, (a bloody Bigot of the Church of *Rome*) during her Reign, there was an Act made in 1. *Eliz. ca.* 1. which is Intituled, *An Act to reſtore to the Crown the ancient Juriſdiction over the Eſtate, Eccleſiaſtical and Spiritual, and aboliſhing all foreign Powers repugnant* Keble's Stat.

repugnant to the ſame. From which Title I collect three things, *1ſt.* That the Crown had anciently a Juriſdiction over the Eſtate Eccleſiaſtical and Spiritual. *2dly.* That that Juriſdiction had for ſome time been at leaſt ſuſpended, and the Crown had not exerciſed it. *3dly,* That this Law did not introduce a New Juriſdiction, but reſtored the Old; but with reſtoring the old Juriſdiction to the Crown, gave a power of Delegating the Exerciſe of it. And as a conſequence from the whole, that all Juriſdiction that is Lodged in the Crown, is ſubject nevertheleſs to the Legiſlative power in the Kingdom.

I ſhall now conſider, what Power this Act of 1. *Eliz.* 1. declares to have been anciently in the Crown, and that appears from *Sect.* 16, 17, 18. of the ſame Act.

Section 16 Aboliſheth all Foreign Authority in Caſes Spiritual and Temporal, in theſe words, **And to the intent that all the uſurped and Foreign Power and Authority, Spiritual and Temporal may for ever be clearly Extinguiſhed, and never to be uſed or obeyed within this Realm, or any other your Majeſties Dominions or Countries; (2) may it pleaſe your Highneſs, that it may be further Enacted by the Authority aforeſaid, That no Foreign Prince, Perſon, Prelate, State or Potentate Spiritual or Temporal ſhall at any time after the laſt day of this Seſſion of Parliament, uſe, enjoy, or exerciſe any manner of Power, Juriſdiction, Superiority, Authority, Preheminence or Privilege Spiritual or Eccleſiaſtical, within this Realm, or within any other your Majeſties Dominions or Countries that now be, or hereafter ſhall be, but from thenceforth the ſame ſhall be clearly Aboliſhed out of this Realm, and all other your Highneſſes Dominions for ever; any Statute, Ordinance, Cuſtom, Conſtitutions or any other matter or cauſe whatſoever to the contrary in any wiſe notwithſtanding.** And after the ſaid Act hath aboliſhed all Foreign Authority, in the very next Section, *Sect.* 17. it annexeth all Eccleſiaſtical Juriſdiction to the Crown in theſe words, **And that alſo it may likewiſe pleaſe your Highneſs, That it may be Eſtabliſhed and Enacted by the Authority aforeſaid, That ſuch Juriſdictions, Privileges, Superiorities and Preheminences, Spiritual and Eccleſiaſtical as by any Spiritual or Eccleſiaſtical Power or Authority hath heretofore been, or may lawfully be exerciſed, or uſed for the Viſitation of the Eccleſiaſtical State and Perſons, and for Reformation, Order and Correction of the ſame, and of all manner of Errors, Hereſies, Schiſms, Abuſes, Offences, Contempts and Enormities ſhall for ever, by Authority of this preſent Parliament, be Unites and Annexed to the Imperial Crown of this Realm.** From theſe words, That ſuch Juriſdiction, *&c.* as by any Spiritual or Eccle-

Eccleſiaſtical Power or Authority had then-to-fore been Exerciſed or uſed were annexed to the Crown, I obſerve, That the Four things aforeſaid, wherein the Pope had incroached, were all reſtored to the Crown; and likewiſe all other Eccleſiaſtical Jurisdiction that had been exerciſed or uſed in this Kingdom, and did thereby become abſolutely veſted in the Crown.

Then Section 18. gives a power to the Crown to aſſign Commiſſioners to Exerciſe this Eccleſiaſtical Jurisdiction in theſe words, **And that your Highneſs, your Heirs and Succeſſors, Kings or Queens of this Realm ſhall have full Power and Authority, by vertue of this Act, by Letters Patents under the Great Seal of** England, **to Aſſign, Name and Authorize when and as often as your Highneſs, your Heirs or Succeſſors ſhall think meet and convenient, and for ſuch and ſo long time as ſhall pleaſe your Highneſs your Heirs or Succeſſors, ſuch perſon or perſons being Natural born ſubjects to your Highneſs, your Heirs or Succeſſors, as your Majeſty, your Heirs or Succeſſors ſhall think meet to exerciſe, uſe, occupy and execute under your Highneſs, your Heirs and Succeſſors, all manner of Juriſdictions, Privileges and Preheminences in any wiſe touching or concerning any Spiritual or Eccleſiaſtical Juriſdiction within theſe your Realms of** England **and** Ireland, **or any other your Highneſſes Dominions and Countries,** (2) **and to Viſit, Reform, Redreſs, Order, Correct and Amend all ſuch Errors, Hereſies, Schiſms, Abuſes, Offences, Contempts and Enormities whatſoever, which by any manner of Spiritual or Eccleſiaſtical Power, Authority or Juriſdiction can or may lawfully be Reformed, Ordered, Redreſſed, Corrected, Reſtrained or Amended, to the pleaſure of Almighty God, the increaſe of Vertue and the conſervation of the Peace and Unity of this Realm;** (3) **And that ſuch perſon or perſons ſo to be named, aſſigned, authorized and appointed by your Highneſs, your Heirs or Succeſſors after the ſaid Letters Patents to him or them made and delivered, as is aforeſaid, ſhall have full Power and Authority by vertue of this Act and of the ſaid Letters Patents under your Highneſs, your Heirs and Succeſſors to exerciſe, uſe and execute all the premiſſes according to the tenor and effect of the ſaid Letters Patents, any matter or cauſe to the contrary in any wiſe notwithſtanding.**

So that, I take it, that all manner of Eccleſiaſtical Juriſdiction was in the Crown by the Common Law of *England*, and declared to be ſo by the ſaid Act of 1. *Eliz.* 1. and by that Act a power given to the Crown to aſſign Commiſſioners to Exerciſe this Jurisdiction; which was accordingly done by Queen *Eliz.* and a High-Commiſſion Court was by her Erected; which

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ſate and held Plea of all Cauſes, Spiritual and Eccleſiaſtical during the Reign of Queen *Eliz.* King *James* the firſt, and King *Charles* the firſt, till the 17. year of his Reign.

Which leads me to conſider the Statute of 17. *Car.* 1. *ca.* 11. which Act recites the Title of 1. *Eliz. ca.* 1. and *Sect.* 18. of the ſame Act, and recites further, *Section* 2. That whereas by colour of ſome words in the aforeſaid branch of the ſaid Act, whereby Commiſſioners are Authorized to execute their Commiſſion according to the tenor and effect of the Kings Letters Patents, and by Letters Patents grounded thereupon, the ſaid Commiſſioners have to the great and inſufferable Wrong and Oppreſſion of the Kings Subjects, uſed to Fine and Impriſon them, and to exerciſe other Authority, not belonging to Eccleſiaſtical Juriſdiction reſtored by that Act, and divers other great Miſchiefs and Inconveniences have alſo enſued to the Kings Subjects by occaſion of the ſaid Branch, and Commiſſions iſſued thereupon, and the executions thereof: Therefore for the repreſſing and preventing of the aforeſaid Abuſes, Miſchiefs and Inconveniences in time to come, (by Sect. 3. the ſaid Clauſe in the ſaid Act 1. *E.* 1. is Repealed with a *Non obſtante* to the ſaid Act in theſe words) Be it Enacted by the Kings moſt excellent Majeſty, and the Lords and Commons in this preſent Parliament Aſſembled, and by the Authority of the ſame, That the aforeſaid Branch, Clauſe Article or Sentence contained in the ſaid Act, and every word, matter and thing contained in that Branch, Clauſe, Article or Sentence ſhall from henceforth be Repealed, Annulled, Revoked, Annihilated and utterly made Void for ever; any thing in the ſaid Act to the contrary in any wiſe notwithſtanding.

And in Sect. 5. of the ſame Act it is Enacted, That from and after the Firſt of *Auguſt*, (in the ſaid Act mentioned) all ſuch Commiſſions ſhall be void, in theſe words, And be it further Enacted, That from and after the ſaid Firſt day of Auguſt no new Court ſhall be erected, ordained or appointed within this Realm of England, or Dominion of Wales, which ſhall or may have the like Power, Juriſdiction or Authority as the ſaid High-Commiſſion Court now hath or pretendeth to have; but that all and every ſuch Letters Patents, Commiſſions and Grants, made or to be made, by his Majeſty, his Heirs or Succeſſors; and all Powers and Authorities, Granted or pretended, or mentioned to be Granted thereby, and all Acts Sentences and Decrees to be made, by vertue or colour thereof, ſhall be utterly void and of none effect.

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By which Act then, the power of Exercising Ecclesiastical Jurisdiction by Commissioners, under the Broad-Seal, is so taken away, that it provides, no such Power shall ever for the future be Delegated by the Crown, to any Person or Persons whatsoever.

Let us then in the last place consider, Whether the Act of 13. *Car.* 2. *ca.* 12. hath Restored this Power or not?

And for this, I take it, that it is not restored by the said Act, or any Clause in it; and to make this evident, I shall First set down the whole Act, and then consider it in the several Branches of it, that relate to this matter: The Act is Entituled,

An Act for Explanation of a Clause contained in an Act of Parliament made in the 17th. *Year of the Late King* Charles, Entituled, *An Act for Repeal of a Branch of a Statute in* primo Elizabethæ, *concerning Commissioners for Causes Ecclesiastical.*

The Act it self runs thus, **Whereas in an Act of Parliament made in the Seventeenth Year of the Late King** Charles, Entituled, An Act for Repeal of a Branch of a Statute *primo Elizabethæ*, concerning Commissioners for Causes Ecclesiastical, **it is (amongst other things) Enacted, That no Arch-bishop, Bishop nor Vicar-General, nor any Chancellor, nor Commissary of any Arch-bishop, Bishop or Vicar-General, nor any Ordinary whatsoever, nor any other Spiritual or Ecclesiastical Judge, Officer or Minister of Justice, nor any other person or persons whatsoever, exercising Spiritual or Ecclesiastical Power, Authority, or Jurisdiction, by any Grant, Licence or Commission of the Kings Majesty, his Heirs or Successors, or by any Power or Authority derived from the King, his Heirs or Successors, or otherwise, shall (from and after the First Day of August which then should be in the Year of our Lord God, One thousand six hundred forty one) Award, Impose or Inflict any Pain, Penalty, Fine, Amercement, Imprisonment or other Corporal Punishment upon any of the Kings Subjects, for any Contempt, Misdemeanor, Crime, Offence, Matter or Thing whatsoever, belonging to Spiritual or Ecclesiastical Cognizance or Jurisdiction; (2.) Whereupon some doubt hath been made that all ordinary power of Coertion and proceeding in Causes Ecclesiastical were taken away, whereby the ordinary course of Justice in Causes Ecclesiastical hath been obstructed. (3.) Be it therefore Declared and Enacted by the Kings most Excellent Majesty, by and with the Advice and Consent of the Lords and Commons in this present Parliament Assembled, and by the Authority thereof, That neither the said Act nor any thing therein contained, doth or shall take away any ordinary Power or Authority**

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from any of the said Arch-bishops, Bishops, or any other person or persons, named as aforesaid, but that they and every of them, exercising Ecclesiastical Jurisdiction, may Proceed, Determine, Sentence, Execute and Exercise all manner of Ecclesiastical Jurisdiction, and all Censures and Coertions appertaining and belonging to the same, before any making of the Act before recited, in all Causes and Matters belonging to Ecclesiastical Jurisdiction, according to the Kings Majesties Ecclesiastical Laws used and practised in this Realm, in as ample Manner and Form as they did and might lawfully have done before making of the said Act.

Sect. 2. And be it further Enacted by the Authority aforesaid, That the afore recited Act of Decimo septimo Car. and all the Matters and Clauses therein contained (excepting what concerns the High-Commission Court, or the new Erection of some such like Court by Commission) shall be and is thereby Repealed to all intents and purposes whatsoever, any thing, clause or sentence in the said Act contained to the contrary notwithstanding.

Sect. 3. Provided always, and it is hereby Enacted, That neither this Act nor any thing herein contained shall extend, or be construed to Revive, or give Force to the said Branch of the said Statute made in the said First Year of the Reign of the said Late Queen Elizabeth mentioned in the said Act of Parliament made in the said Seventeenth Year of the Reign of the said King Charles; but that the said Branch of the said Statute made in the said First Year of the Reign of the said Late Queen Elizabeth shall stand and be Repealed in such sort as if this Act had never been made.

Sect. 4. Provided also, and it is hereby further Enacted, That it shall not be lawful for any Arch-bishop, Bishop, Vicar-General, Chancellor, Commissary, or any other Spiritual or Ecclesiastical Judge, Officer or Minister, or any other person having or exercising Spiritual or Ecclesiastical Jurisdiction, to Tender or Administer unto any person whatsoever, the Oath usually called the Oath Ex Officio, or any other Oath whereby such person to whom the same is tendered or Administred, may be charged or compelled to Confess or Accuse, or to purge him or her self of any Criminal matter or thing whereby he or she may be liable to Censure or Punishment; any thing in this Statute, or any other Law, Custom or Usage heretofore to the contrary hereof in any wise notwithstanding.

Sect. 5. Provided always, That this Act or any thing therein

therein contained shall not extend or be construed to extend to give unto any Arch-bishop, Bishop or any other Spiritual or Ecclesiastical Judge, Officer or other person or persons aforesaid, any Power or Authority to Exercise, Execute, Inflict or Determine any Ecclesiastical Jurisdiction, Censure, or Coertion, which they might not by Law have done before the Year of our Lord 1639. (2.) Nor to Abridge or Diminish the Kings Majesties Supremacy in Ecclesiastical Matters and Affairs, nor to confirm the Canons made in the Year 1640. nor any of them, nor any other Ecclesiastical Laws or Canons not formerly Confirmed, Allowed or Enacted by Parliament, or by the Established Laws of the Land, as they stood in the Year of our Lord 1639.

From the Title of the Act, and the Act it self considered, I gather,

First, That it is an Explanatory Act of the 17. of *Car.* 1. as to one particular Branch of it, and not introductive of any New Law.

Secondly, That the occasion of making it was not from any doubt that did arise, Whether the High-Commission Court were taken away? or; Whether the Crown had power to Erect any such-like Court for the future, but from a doubt that was made that all ordinary Power of Coertion, and proceedings in Causes Ecclesiastical was taken away whereby Justice in Ecclesiastical Matters was obstructed; and this doubt did arise from a Clause in 17. *Car.* 1. *ca.* 11. *Sect.* 4. herein mentioned to be recited in the said Act of 13. *Car.* 2. *ca.* 12.

Thirdly, That this Statute of 13. *Car.* 2. *ca.* 12. as appears upon the face of it, was made to the intent the ordinary Jurisdiction which the Bishops and other Ecclesiastical persons had always exercised under the Crown, might not be infringed; but not to restore to the Crown the power of Delegating the Exercise of Ecclesiastical Jurisdiction, by Letters Patents to Lay persons or any others, and as to this nothing can be plainer than the words of the Act it self, *Sect.* 2.

Whereby 17. Car. 1. is repealed but takes particular care to except what concerned the High-Commission Court or the new erection of some such Court by Commission.

Neither did the Law-makers think this Exception in that Statute of 13. *Car.* 2. *ca.* 12. *Sect.* 2. to be sufficient, but to put the matter out of all doubt, in the Third Section of the same Statute, It is provided and Enacted, That neither that Act nor any thing therein contained, should extend or be construed to revive, or give force to the Branch of 1. Eliz. 1. Sect. 18. but that the same Branch should stand absolutely Repealed. And if so then the power of the Crown to delegate the Exercise of Ecclesiastical Jurisdi-

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ction is wholely taken away, for it was vested in the Crown by 1 *Eliz.* 1. and taken away by 17. *Car.* 1. *ca.* 11. and is in no manner restored by 13. *Car.* 2. 12. or any other.

But there may arise an Objection from the words in the Statute of 13. *Car* 2. *ca.* 12. that saith, That **that Act shall not extend to abridge or diminish the Kings Majesties Supremacy in Ecclesiastical Matters and Affairs.** Whence some Men would gather; That the same Power still remains in the Crown that was in it before 17. *Car.* 1. *ca.* 11.

To which Objection I give this Answer, That every Law is to be so construed, that it may not be *Felo de se*, and that, for the honour of the Legislators, King, Lords and Commons. Now I would appeal to the Gentlemen themselves that assert this Doctrine, Whether they can so construe the Act of 13. *Car.* 2. *ca.* 12. as they pretend to do, without offering violence to their own Reason? For when the 1 *Car.* 1. *ca.* 11. had absolutely Repealed the Branch of 1. *Eliz.* 1. that vested the power in the Crown of Delegating the Exercise of Ecclesiastical Jurisdiction, and Enacts, That no such Commission shall be for the future; and the Act of 13. *Car.* 2. *ca.* 12. Repeals the 17. *Car.* 1. *ca.* 12. except what relates to that particular Branch, there can no more of the Kings Supremacy in Ecclesiastical Matters and Affairs, be saved by the saving in the 13. *Car.* 2. *ca.* 12. but what was left in the Crown by 17. *Car.* 1. *ca.* 11.

And now I hope I have sufficiently evinced, That all the Proceedings before the Ecclesiastical Commissioners are *CORAM NON JUDICE*; and therefore have sufficient Reason to believe, That the same would never have been set on foot by his present Majesty (who had always the Character of *JAMES the Just*, and hath Promised upon his Royal Word, That he will invade no Mans Property) had he not been Advised thereunto by them who are better versed in the Canons of the Church of *ROME*, than in the Laws that relate to the CROWN and CHURCH of *ENGLAND*.

FINIS.